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SOUTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

SHAWN TWYNE,

Petitioner,

vs.

I.D. CLAY; et al.,

Respondents.

CASE NO. 09-CV-2120 BEN (POR)

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND  
DENYING PETITION FOR WRIT OF  
HABEAS CORPUS

Petitioner is a state prisoner proceeding pro se in this 28 U.S.C. § 2254 action. Petitioner challenges his conviction for driving under the influence of alcohol, driving with a blood alcohol concentration of .08 or more, and driving on a suspended or revoked license. Respondents filed an answer to the Petition, and Petitioner filed a traverse. (Docket Nos. 22, 24.) Pursuant to Civil Local Rule 72.1.d and 28 U.S.C. § 636, the case was referred to the Magistrate Judge for issuance of a report and recommendation.

On March 11, 2011, Magistrate Judge Porter issued a Report and Recommendation, recommending that the Court deny Petitioner's Section 2254 petition. (Docket No. 37.) Objections to the Report and Recommendation were due no later than April 11, 2011. To date, no objections have been filed.

Where, as here, the case has been referred to the magistrate judge pursuant to 28 U.S.C. § 636, a district judge "may accept, reject, or modify the recommended disposition." Fed. R. Civ. P. 72(b); see 28 U.S.C. § 636(b)(1). "[T]he court shall make a de novo determination of those portions of the

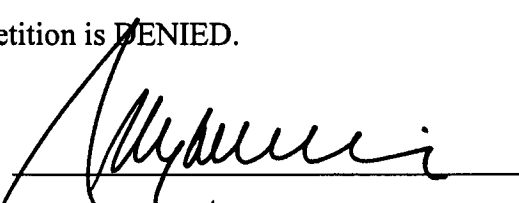
1 [Report and Recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1); *see also* Fed. R.  
2 Civ. P. 72(b). “The statute makes it clear that the district judge must review the magistrate judge’s  
3 findings and recommendations de novo if objection is made, but not otherwise.” *United States v.*  
4 *Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). “Neither the Constitution nor the statute  
5 requires a district judge to review, de novo, findings and recommendations that the parties themselves  
6 accept as correct.” *Reyna-Tapia*, 328 F.3d at 1121. Accordingly, a district court is entitled to adopt  
7 a magistrate judge’s report and recommendation based on the lack of objections.

8         Nonetheless, the Court has reviewed the Petition and the Magistrate Judge’s Report and  
9 Recommendation de novo and agrees that the Petition should be denied. As explained in the Report  
10 and Recommendation, the state court’s denial of Petitioner’s sufficiency of evidence claim was neither  
11 contrary to nor an unreasonable application of clearly established Supreme Court law, nor was it based  
12 on an unreasonable determination of the facts in light of the evidence presented. As to Petitioner’s  
13 claims for prosecutorial misconduct, Petitioner has not shown the evidence was actually false or that  
14 the prosecutor withheld exculpatory evidence. Accordingly, the state court’s denial of this claim was  
15 likewise neither contrary to nor an unreasonable application of clearly established Supreme Court law.  
16 Petitioner also has not shown that his counsel was ineffective, as there were no grounds upon which  
17 his counsel could object to the admission of documents, nor did Petitioner suffer prejudice as a result  
18 of counsel’s failure to object. Lastly, Petitioner’s claims based on errors at the preliminary hearing  
19 are without merit. Petitioner did not have a federal constitutional right to a preliminary hearing and  
20 California law does not require the prosecutor to prove prior strikes at the preliminary hearing stage.  
21 Additionally, any doubt regarding the proof presented at the preliminary hearing is dispelled by  
22 Petitioner’s subsequent conviction for charges and true findings of the prior convictions as alleged.

23         Accordingly, in the absence of objections and after conducting a de novo review, the Court  
24 ADOPTS the Report and Recommendation. The Petition is DENIED.

25 IT IS SO ORDERED.

26 Date: May 9, 2011

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28 Hon. Roger T. Benitez, District Judge